IN THE HIGH COURT OF JUDICTURE AT MADRAS

DATED: 19.11.2007

CORAM:

THE HON'BLE Mr.A.P.SHAH, CHIEF JUSTICE

and

THE HON'BLR Mr.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.33637 of 2007
and M.P.Nos.1 and 2 of 2007

Prof. I.Elangovan .. Petitioner.

/versus/

1.Govt. of Tamil Nadu
represented by its Chief Secretary,
Fort St. George,
Chennai-9.

2.The Secretary to Govt. of Tamil Nadu,
Department of Higher Education,
Fort St. George,
Chennai-600 009.

3.The Secretary to Govt. Of Tamil Nadu,
Department of Adi Dravidar and
Tribal Welfare,
Fort St. George, Chennai-9.

4.The Teachers Recruitment Board,
represented by its Chairman
EVK Sampath Building,
College Road,
Chennai-6. .. Respondents.

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Writ Petition filed under Article 226 of the Constitution of India for the issue of a writ of certiorarified mandamus calling for the records relating to the impugned G.O.Ms.No.216, Higher Education (F2) Department dated 5.7.2007 from the second respondent and quash para-5 of the impugned G.O. that postpones the recruitment of 222 Lecturers against the SC/ST backlog vacancies to future recruitments without any time frame and to direct the respondents to fill all the 522 SC/ST backlog vacancies before

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filling any vacancy as per the order of this Court in W.P.16087 of 1999 dated 14.1.2000.

For petitioner : Mr.D.Hariparanthaman

For first respondent: Mr.Raja Kalifulla,
Govt. Pleader.
Assisted by Mr.V.R.Thangavelu,
Govt. Advocate.

For respondents 2 to 4: Mr.G.Sankaran,
Special Govt. Pleader(Edn.)

(The Order of the Court was made
by the Hon'ble the Chief Justice)

Admit. Mr.Raja Kalifulla, learned Government Pleader and Mr.G.Sankaran, Special Government Pleader (Education) waive notice for first respondent and respondents 2 to 4 respectively.

2.The petitioner seeks for issuance of a writ of certiorarified mandamus to quash G.O.Ms.No.216, Higher Education (F2) Department, dated 5.7.2007 in so far as not making provision for filling the entire 522 SC/ST backlog vacancies in the Lecturers cadre in the Government Arts and Science Colleges. The petitioner has also challenged the said G.O. on the ground that it is opposed and in violation of undertaking given by the State Government to this Court in W.P.No.16087 of 1999 agreeing to fill the backlog vacancies within five years. Based on this undertaking, a Division Bench of this Court passed an order on 14.1.2000 to fill the backlog vacancies within five years. The five years period expired long back. The impugned G.O. nowhere refers to the undertaking given to this Court; nor makes any provision for clearing backlog of 522 vacancies; but merely provides that such backlog vacancies shall be filled up in a phased manner.

3.The petitioner contends and in our opinion rightly that when there are 2175 vacancies, there is no reason for not filling up the backlog vacancies for SC/ST candidates as per the order of this Court in W.P.No.16087 of 1999. The facts are not in dispute. There are 67 Government Arts and Science Colleges in Tamil Nadu having sanctioned strength of 4966 Lecturers and the number of vacancies in the said cadre is 2175 as on 31.5.2006. It appears that as on 14.12.1998 there existed 595 SC/ST backlog vacancies in the Lecturer cadre in the Government Colleges. Out of 595 SC/ST backlog vacancies 73 posts were filled up through a Special Recruitment drive in the year 2000. Still there remains 522 vacancies unfilled right from the year 2000. A Public Interest

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Litigation in W.P.No.16087 of 1999 was filed praying for a direction to fill in all the SC/ST backlog vacancies that existed in the various Departments in Tamil Nadu. The State while filing counter affidavit to the aforesaid writ petition, gave a solemn undertaking to this Court as follows:-

> "Though it may be difficult now to fill up the carried forward backlog vacancies in each post which arose from 1.4.89 the backlog vacancies which arose from 1.4.89 have been taken into account. Where there is inadequate representation of Scheduled Castes and Scheduled Tribes, Backward Classes and Most Backward Classes and Denotified Communities, the number of such shortfall vacancies in each post shall be taken into account and appointments shall be made at the entry level post in the department within a period of 5 years."

As per the undertaking the State Government was required to fill up the vacancies on or before 14.1.2005. However, vacancies were not filled in. Instead the second respondent issued an advertisement on 18.9.2006 calling for applications to fill up 1000 posts of Lecturers in the various Departments in the Government Arts and Science Colleges in Tamil Nadu without complying with the directions of this Court, dated 14.1.2000.

4.Learned Government Pleader fairly conceded that the State Government is obliged to fill up the 522 backlog vacancies in accordance with the undertaking which was given by the State Government in the Writ Petition No.16087 of 1999. He, however, submitted that 300 vacancies would be filled up from SC/ST backlog vacancies in the first instance immediately and the remaining 226 vacancies would be filled up later as soon as the vacancies arise on account of superannuation etc., within 1-1/2 years from today.

5.We are not inclined to accede to the submission made by the learned Government Pleader. As far back as in 2000, this Court passed an order for filling up the 522 backlog vacancies within five years and the period of five years expired nearly three years ago and even for the first batch of around 1000 Teachers no provision has been made for filling up the backlog vacancies. We are therefore, of the opinion that it would be necessary to direct the State Government to fill up all the backlog vacancies at a stretch as sufficient number of vacancies are available with the Education Department. Accordingly, we direct that the Government may proceed with the recruitment under the G.O. which has already been issued for 1020 vacancies but while filling up balance 1000 vacancies, all 522 backlog vacancies shall be filled up in the present recruitment which is to be notified.

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6.Our attention was drawn to the order of the Division Bench of this Court in W.P.(MD) 1997 of 2006 batch of cases, wherein this Court held that SC/ST backlog vacancies shall not be clubbed with the regular recruitment based on roster and separate advertisement for Special Recruitment shall be issued in respect of recruitment against SC/ST backlog vacancies. This is not yet done. Therefore, we direct the State Government to give separate advertisement for 522 vacancies and complete the recruitment process within a period of two months and make appointments as early as possible. The Writ Petition stands disposed of accordingly. Consequently, connected M.Ps. are closed.

Sai

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Chief Secretary,
Govt. of Tamil Nadu
Fort St. George,
Chennai-9.

2.The Secretary to Govt. of Tamil Nadu,
Department of Higher Education,
Fort St. George,
Chennai-600 009.

3.The Secretary to Govt. Of Tamil Nadu,
Department of Adi Dravidar and
Tribal Welfare,
Fort St. George, Chennai-9.

4.The Chairman
The Teachers Recruitment Board,
EVK Sampath Building,
College Road,
Chennai-6.

1 cc to Mr.D.Hariparanthaman, Advocate, SR.68538

MDR (CO)

dv/30.11.

W.P.No.33637 of 2007

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